Personal Audio v. Acer America, et al., **Case No. 1:14-cv-8-RC**
Personal Audio LLC v. Fuhu, Inc., **Case No. 1:13-cv-513-RC**

EXHIBIT A: PROPOSED CONSTRUCTIONS AND SUPPORT

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support
1.	"**selected audio program segments**" ('076 patent claim 1) "**audio program segment(s)**" (claims 1, 14, 15 of the '076 patent) "**program segment(s)**" (claims 6, 14 of the '178 patent)	Plaintiff proposes the construction from *Personal Audio LLC v. Apple, Inc. et al.*, Case No. 9:09-cv-00111-RC ("*Personal Audio v. Apple*") Preamble is limiting; Plaintiff's Position: Program segments needs no further construction, beyond that proposed for "selected audio program segments" (*i.e.* the term to which program segments relates); Supporting Evidence: • '076 patent at Abstract; 1:6-10; 1:64--3:27; 4:1-3, ; 4:43-59; 6:47-8:53; 8:63-9:62; 9:64-10:6; 10:44-54; 12:3-21; 12:49-16:67 17:5-14; 18:60-19:15; 36:10-14; 36:25-35, 46:13-33 Fig. 1; Fig. 2; Fig. 4; Fig. 5; Claim 1, 14; • '178 patent, 1:18-2:8; 2:12-23; 6:3-8; 18:24-42; 21:62-67; • ' *Personal Audio LLC v. Apple* ○ Court's Order re: Apple's Motions for JMOL (August 19, 2011) (and evidence cited therein) • '178 file History, 10/28/08 Amendment • '076 Amended Claims filed 6/17/1999; • '076 Remarks to Office Action filed 6/17/1999; • '076 Response After Final Rejection 3/3/00; • '076 Notice of Allowance dated 9/11/2000	"selected audio program segments": the preamble is not limiting. "audio program segment(s)" / "program segment(s): plain and ordinary meaning.

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support
		• Appeal Brief dated 8/30/00 • U.S. Patent No. 5,153,579 (Fisch); U.S. Patent No. 5,810,600 (Okada) • Microsoft Computer Dictionary 1999; • Dictionary 4th Ed. by Charles Sippl (1986); • Dictionary of Computer and Internet Terms, 5th Ed. (1996) • Expert Declaration	
2.	"**file**" ('076 patent claims 1, 14; '178 patent claim 1)	Plain and ordinary meaning and no construction necessary. In the alternative, Personal Audio proposes "an electronic data file" Supporting Evidence: • '076 patent at Abstract; 1:50-56; 4:46-50; 5:12-17; 5:35-43 ; 5:53-59; 6:47-59; 7:1-4; 7:63-66; 8:20-44; 9:45-62; 10:1-6; 12:3-15; 15:3-9; 17:11-18; 19:12-15; 31:4-19; 31:62-67; 32:63-33:10; 34:24-44; 35:38-53; 39:31-34; 40:40-43; 41:1-20; 42:20-29; 44:6-49; Fig. 4, Claims 1 and 14 • Dictionary of Computer and Internet Terms; 5th Edition (1996) • Expert Declaration	"a collection of data that is stored and manipulated as a named unit by a file-management system" Supporting Evidence: • '076 patent at 6:51-55; 7:1-17; 8:29-38; 9:42-50; 17:11-14; 18:60-65; 32:62-67; 34:24-28; 44:49-59; Fig. 5. • '178 patent at 6:60-64; 7:10-26; 8:38-47; 9:50-58; 17:15-18; 18:61-66; 32:55-60; 34:15-19; 44:31-41; Fig. 5. • *Personal Audio, LLC v. Apple Inc., et al.*, No. 9:09-cv-111 ("*Personal Audio v. Apple*"), ECF No. 363 at 12. • Academic Press Dictionary of Science and Technology, 826 (Christopher Morris, ed. 1992)
3.	**Sequencing file terms** "**file of data establishing a sequence**" ('076 patent	Plaintiff proposes the construction from *Personal Audio LLC v. Apple, Inc. et al.*, Case No. 9:09-cv-00111-RC "a file of data that identifies the order in which audio	"a file that is received by the player, stored, and used by the processor to both control playback of each song in the recommended order and respond to control commands"

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support

	claims 1, 14)
	
	"**sequencing file**" ('178 patent claim 1)
	
	"**playback session sequencing file**" ('178 patent claim 14)
		program segments are to be played and that may contain information about the sequence of events that occur during playback."
		
		Supporting Evidence:
		• '076 patent, 2:44-3:27; 5:47-59; 6:51-67; 7:1-13; 8:12-44; 8:54-64; 9:11-62; 9:64-10:6; 10:44-54; 12:3-15; 12:43-57; 12:48-16:63; 17:5-14; 18:60-19:15; 34:24-35:37; 36:22-26; 36:37-47; Fig. 1, Fig. 2; Fig. 4; Fig. 5, Claims 1 and 14, '178 Patent, Claims 14 and 16
		• '076 File History, 6/17/99 Amendment;
		• '076 File History, 3/8/00 Response After Final Rejection;
		• '178 File History, 10/28/08 Amendment;
		• U.S. Patent No. 5,153,579 (Fisch);
		• U.S. Patent No. 5,810,600 (Okada).
		• *Personal Audio v. Apple*
		   o Joint Claim Construction and Prehearing Statement, Dkt. No. 142
		   o Amended Joint Construction and Prehearing Statement, Dkt. No. 159
		   o Court's Claim Construction Order, Dkt. No. 258
			Supporting Evidence:
			• '076 patent at 2:47-54; 3:13-21; 6:51-7:17; 8:39-9:10; 12:3-43; 14:20-34; 30:59-36:8.
			• '178 patent at 2:51-58; 3:19-28; 6:60-7:26; 8:48-9:19; 12:9-49; 14:25-39; 30:56-35:63.
			• '178 Patent Reexamination (Control No. 95/001,295): Patent Owner's July 16, 2010 Response, at 8.
			• '178 Patent Reexamination (Control No. 95/001,295): July 16, 2010 Declaration of K. Almeroth, at ¶¶ 14, 15, 22, 69, 70, 72.
			• '178 Patent Reexamination (Control No. 95/001,295): Patent Owner's April 22, 2011 Response, at 11 & n.8, 16, 18.
			• *Personal Audio v. Apple*, ECF No. 142 (Joint Claim Construction and Prehearing Statement and attached Exs. A & B addressing the '076 and '178 patents, respectively, and the column labeled "Plaintiff's Proposed Constructions and Supporting Evidence"); ECF No. 163 (Personal Audio's Opening Claim Construction Brief) (and evidence cited therein).

4.	**Downloading terms** "**a communications port for establishing a data communications link for**	Communication Port "a port for establishing a connection between a player client and a network" Downloading	Communications port "a port for establishing a connection between the player and a network" Downloading "transferring digital compressed audio program files and a separate

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support

	downloading a plurality of separate digital compressed audio program files and a separate sequencing file from one or more server computers" ('178 patent claim 1)
	
	"**a communications port for downloading at least some of said audio program files and said playback session sequencing file from said one or more server computers**" ('178 patent claim 14)
		"transferring a copy of a file from a remote computer to the requesting computer by means of a modem or network"
		
		"transferring a plurality of separate digital compressed audio program files and a separate sequencing file from the memory of one or more remote server computers via a modem or network to the memory of the player upon a request by the player."
		
		Supporting Evidence:
		• '076 patent at Abstract; 1:6-9; 1:64-2:3; 2:44-3:27;; 5:47-59; 6:51-8:44; 9:31-62; 9:64-10:6; 10:44-54; 12:3-15; 17:5-14;18:60-19:15; Fig. 1; Fig. 2, Fig. 4; Fig. 5; Claims 1 & 14;
		• '178 patent at 4:37-40; 5:44-6:2; 7:50-8:15; 10:9-14; 14:66-15:1
		• Microsoft Computer Dictionary 1999;
		• Dictionary 4th Ed. by Charles Sippl (1986);
		• *Personal Audio LLC v. Apple, Inc. et al.*, Case No. 9:09-cv-00111-RC
		   o Personal Audio's Opening Claim Construction Brief, Dkt. No. 163
		   o Court's Claim Construction Order, Dkt. No. 258 & 292
		   o Court's Order re Apple's Motions for JMOL (August 19, 2011) (and evidence cited therein)
		• Expert Declaration
		• *Personal Audio, LLC v. HTC Corp., et al.,* Case No. 1:11-cv-00432-RC ("*Personal Audio v. HTC*")
		   o Personal Audio's Responsive Claim Construction Brief, Dkt. No. 127 (and evidence cited therein)
			sequencing file from one or more separate computers to the player over a network upon a request by the player identifying said digital compressed audio program files and said separate sequencing file."
			
			"transferring at least some of said audio program files and said playback session sequencing file from one or more separate computers to the player over a network upon a request by the player identifying said digital compressed audio program files and said playback session sequencing file."
			
			Supporting Evidence:
			• '178 patent at 5:45-6:2; 6:60-7:1; 7:10-40; 8:28-57; 9:39-58; 14:66-15:13.
			• '178 Patent Reexamination (Control No. 95/001,295): Patent Owner's July 16, 2010 Response, at 1, 2.
			• The IEEE Standard Dictionary of Electrical and Electronics Terms, Sixth Ed. 1997 ("file server").
			• Microsoft Press, Computer Dictionary, Third Edition 1997 ("file server," "server").

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support
		o Personal Audio's Sur-Reply Claim Construction Brief, Dkt. No. 130 (and evidence cited therein)	
5.	"**means for storing a plurality of program segments, each of said program segments having a beginning and an end**" ('076 patent claim 1)	This term is governed by 35 U.S.C. § 112(6). The structure corresponding to the claimed function is the following structures and equivalents thereof: A player client that has been programmed to: Store downloaded selected audio program segments, downloaded from one or more host servers, to a local storage system. A local storage system is: 1. A data storage system consisting of both high speed RAM storage and a persistent mass storage device, such as a magnetic disk memory; or 2. A replaceable media, such as an optical disk cartridge. Supporting Evidence: • '076 patent at Abstract; 1:6-9; 1:64-2:3; 2:44-3:27; 2:3-8; 2:44-54; 4:43-59; 5:47-59; 6:62-8:53; 8:63-9:13; 9:51-10:6; 10:44-54; 12:3-21; 12:49-63; 12:54-:16:67; 17:5-14; 18:60-19:15; 36:10-14; 36:25-35; Fig. 1; Fig. 2, Claims 1 & 14; • *Personal Audio LLC v. Apple*	Construction from *Personal Audio LLC v. Apple, Inc. et al.*, Case No. 9:09-cv-00111-RC This term is governed by 35 U.S.C. § 112(6). Function "storing a plurality of program segments" Structure 1. A data storage system consisting of both high speed RAM storage and a persistent mass storage device, such as a magnetic disk memory; or 2. A replaceable media, such as an optical disk cartridge.

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support
		o Court's Order re: Apple's Motions for JMOL (August 19, 2011) (and evidence cited therein)	
6.	"**means for receiving and storing a file of data establishing a sequence**" ('076 patent claim 1)	This term is governed by 35 U.S.C. § 112(6). The structure corresponding to the claimed function as described in *inter alia* Fig. 2 is the following structures and equivalents thereof: A player client that has been programmed to: 1. Establish a communication link with one or more host servers of a digital audio library; and 2. Download from one or more host servers using an Internet connection a "recommended program sequence file" into a local storage unit of the player/client. The "recommended program sequence file" is a file that "identifies the order in which downloaded program segments are to be played, with the initial selection and sequence being established based on user preference data" Download is defined as "to transfer a copy of a file from a remote computer to the requesting computer by means of a modem or network" Supporting Evidence: • '076 patent at Abstract; 1:6-10, 1:64-3:27, 4:1-3, ; 4:43-59; 5:3-59; 6:51-8:53; 8:63-9:50; ; 9:51-10:6;	Construction from *Personal Audio LLC v. Apple, Inc. et al.*, Case No. 9:09-cv-00111-RC This term is governed by 35 U.S.C. § 112(6). <u>Function</u> "receiving and storing a file of data establishing a sequence" <u>Structure for receiving:</u> 1. A conventional high speed data modem and modem dial up driver software for connecting via conventional dial up telephone SLIP or PPP TCP/IP series data communication link to an Internet service provider which provides access to the Internet; 2. An ISDN or cable modem link for connecting to an Internet service provider which provides access to the Internet; 3. Cellular radio, cellular phone, or satellite links; 4. A radio or infrared link for connecting to a local communications server computer linked to the Internet; 5. A place in which a replaceable media, such as an optical disk cartridge, may be inserted into the player; or 6. A direct link implemented using the Cellular Digital Packet Data (CDPD) service for providing access to the Internet using the TCP/IP protocol. <u>Structure for storing:</u>

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		10:44-54; 12:9-21; 12:49-16:67; 17:5-14; 18:60-19:15; 36:10-14; 36:25-35; Fig. 1; Fig. 2, Claim 1 & 14; • *Personal Audio LLC v. Apple* ○ Court's Order re: Apple's Motions for JMOL (August 19, 2011) (and evidence cited therein) • '076 Amended Claims filed 6/17/1999; • '076 Remarks to Office Action filed 6/17/1999; • '076 Response After Final Rejection 3/3/00; • '076 Notice of Allowance dated 9/11/2000; • '178 File History Amendement 10/28/08; • U.S. Patent No. 5,153,579 (Fisch); U.S. Patent No. 5,810,600 (Okada) • Microsoft Computer Dictionary 1999; • Dictionary 4th Ed. by Charles Sippl (1986); • Dictionary of Computer and Internet Terms, 5th Ed. (1996) • Expert Declaration	1. A data storage system consisting of both high speed RAM storage and a persistent mass storage device, such as a magnetic disk memory; or 2. A replaceable media, such as an optical disk cartridge.
7.	"**means for continuously reproducing said program segments in the order established by said sequence in the absence of a control command**" ('076 patent claim 1)	This term is governed by 35 U.S.C. § 112(6). The structure corresponding to the claimed function is the following structures and equivalents thereof: A sound card that includes a digital to analog converter; headphones or one or more speakers; and a player client programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 233, 235, 237, 239, and 261 and more fully described at column 12, line 16 to	This term is governed by 35 U.S.C. § 112(6). Function "continuously reproducing said program segments in the order established by said sequence in the absence of a control command" Structure A sound card that includes a digital to analog converter; headphones or one or more speakers; and a general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support
		column 13, line 11 and column 34, line 28 to column 35, line 44. Specifically, this algorithm includes the following steps: • beginning playback with the program segment identified by the ProgramID contained in the Selection_Record specified by the CurrentPlay variable; • when the currently playing program segment concludes, incrementing the CurrentPlay variable by one and fetching and playing the program segment identified by the ProgramID contained in the next Selection_Record in the sequencing file; • repeating step (2) until the last Selection_Record in the sequencing file is reached, which resets the CurrentPlay variable to "1" to begin the playing sequence again with the first Selection_Record in the sequencing file. Supporting Evidence: • '076 patent, 1:6-9; 1:64-2:3; 2:44-3:27; 4:33-5:5; 5:47-59; 6:62-8:44; 8:62-9:6;9:51-10:6; 10:44-54; 11:39-13:21; 15:21-16:6; 16:54-60; 17:5-14; 18:60-19:15; 31:63-33:40, 34:19-35:53; Figs. 1, 2, 3 and 5; claims 1, 9, 10, 11, 12 and 16. • *Personal Audio, LLC v. Apple* o Joint Claim Construction and Prehearing	items 233, 235, 237, 239, and 261 and more fully described at column 12, line 16 to column 13, line 11 and column 34, line 28 to column 35, line 44. Specifically, this algorithm includes the following steps: (1) beginning playback with the program segment identified by the ProgramID contained in the Selection_Record specified by the CurrentPlay variable; (2) when the currently playing program segment concludes, (a) if the concluded segment is a topic or subject announcement, incrementing the CurrentPlay variable by one and fetching and playing the program segment identified by the ProgramID contained in the next Selection_Record in the received sequencing file, and (b) if the concluded segment is a program segment, (i) scanning forward in the received sequencing file to locate the next Selection_Record containing the appropriate LocType; (ii) resetting the CurrentPlay variable to the record number of that Selection_Record; and (iii) fetching and playing the program segment identified by the ProgramID contained in the new Selection_Record; (3) repeating step (2) until a rewind Selection_Record (LocType: R) in the received sequencing file is reached, which resets the CurrentPlay variable to the location value contained in the rewind Selection_Record which is set to "1" to begin the playing sequence again with the first Selection_Record in the received sequencing file. Supporting Evidence: • '076 patent at 29:57-30:9; 30:59-31:3; 31:63–32:50; 34:24-36; 34:45-49; 34:65-35:1; 35:38-44; 35:54-64; Figs. 3, 5.

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support

		Statement, Dkt. No. 142
		   o Amended Joint Construction and Prehearing Statement, Dkt. No. 159
		   o Order Denying Motion for Summary Judgment, Dkt. No. 292
		   o Court's Reconsideration Claim Construction Order, Dkt. No. 358
		   o Court's Order re Apple's Motions for JMOL (August 19, 2011) (and evidence cited therein)
		• *Personal Audio, LLC v. HTC*
		   o Personal Audio's Responsive Claim Construction Brief, Dkt. No. 127, p.11-18
		   o Personal Audio's Sur-Reply Claim Construction Brief, Dkt. No. 130, p. 3-4
		
		Plaintiff's changes to the Apple construction:
		• **removing the reference to "LocType"**
		• **replacing the "general purpose computer" with "player client"**
			Defendants' changes to the Apple construction
			• **Change steps 2 and 3**
			• **Adding the word "received" before the "sequencing file"**

8.	"**means for detecting a first command indicative of a request to skip forward**" ('076 patent claim 1)	This term is governed by 35 U.S.C. § 112(6). The structure corresponding to the claimed function is the following structures and equivalents thereof: A player client programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 261, 262, and 275. Specifically, this algorithm includes the following steps: • determining whether input from the means for	Construction from *Personal Audio LLC v. Apple, Inc. et al.*, Case No. 9:09-cv-00111-RC This term is governed by 35 U.S.C. § 112(6). <u>Function</u> "detecting a first command indicative of a request to skip forward" <u>Structure</u> A general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 261, 262, and 275. Specifically, this algorithm includes the following steps:

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support
		accepting control commands is a command using a conditional programming construct; and • if the input is a command, using a "branch" programming construct to select one of the player's available commands, which include a "Skip" command, for execution. Supporting Evidence: • '076 Patent, 1:6-9; 1:64-2:3; 2:11-31, 2:44-3:27; 5:35-38; 5:47-59; 6:62-8:44; 8:56-9:6; 9:51-10:6; 10:44-54;12:47-61; 13:52-61; 15:21-55, 15:60-16:6; 17:5-14; 18:60-19:15; Figs. 1, 2 and 3, Claims 1, 2 and 3. • *Personal Audio LLC v. Apple, Inc. et al.*, Case No. 9:09-cv-00111-RC o Personal Audio's Opening Claim Construction Brief, Dkt. No. 163 o Personal Audio's Response to Motion for Summary Judgment on Indefiniteness, Dkt. No. 174 o Court's Claim Construction Order, Dkt. No. 292 in the Apple Case • Dictionary of Computer and Internet Terms, 5th. Ed. (1996) (conditional branch) • Microsoft Press Computer Dictionary, 3rd Ed. (1997) (conditional and conditional branch) Expert Declaration **Plaintiff's changes to the Apple construction:** • **replacing the "general purpose computer" with "player client"** • **replacing the "'if-then-else' programming**	(1) determining whether input from the means for accepting control commands is a command using a "if-then-else" programming construct; and (2) if the input is a command, using a "branch" programming construct to select one of the player's available commands, which include a "Skip" command, for execution.

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support
		construct" with ""conditional programming construct"	
9.	"**means for detecting a second command indicative of a request to skip backward**" ('076, claim 2)	This term is governed by 35 U.S.C. § 112(6). The structure corresponding to the claimed function is the following structures and equivalents thereof: A player client programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 261, 262, and 278. Specifically, this algorithm includes the following steps: • determining whether input from the means for accepting control commands is a command using a conditional programming construct; and • if the input is a command, using a "branch" programming construct to select one of the player's available commands, which include a "Skip" command, for execution. Supporting Evidence: • '076 Patent, 1:6-9; 1:64-2:3; 2:11-31, 2:44-3:27; 5:35-38; 5:47-59; 6:62-8:44; 8:56-9:6; 9:51-10:6; 10:44-54;12:47-61; 13:52-61; 15:21-55, 15:60-16:6; 17:5-14; 18:60-19:15; Figs. 1, 2 and 3, Claims 1, 2 and 3. • *Personal Audio LLC v. Apple, Inc. et al.*, Case No. 9:09-cv-00111-RC ○ Personal Audio's Opening Claim Construction Brief, Dkt. No. 163	Construction from *Personal Audio LLC v. Apple, Inc. et al.*, Case No. 9:09-cv-00111-RC This term is governed by 35 U.S.C. § 112(6). <u>Function</u> "detecting a second command indicative of a request to skip backward" <u>Structure</u> A general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 261, 262, and 278. Specifically, this algorithm includes the following steps: (1) determining whether input from the means for accepting control commands is a command using a "if-then-else" programming construct; and (2) if the input is a command, using a "branch" programming construct to select one of the player's available commands, which include a "Back" command, for execution.

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support

		◦ Personal Audio's Response to Motion for Summary Judgment on Indefiniteness, Dkt. No. 174
		    ◦ Court's Claim Construction Order, Dkt. No. 292 in the Apple Case
		• Dictionary of Computer and Internet Terms, 5th. Ed. (1996) (conditional branch)
		• Microsoft Press Computer Dictionary, 3rd Ed. (1997) (conditional and conditional branch)
		  Expert Declaration
		
		Plaintiff's changes to the Apple construction:
		• **replacing the "general purpose computer" with "player client"**
		• **replacing the "'if-then-else' programming construct" with ""conditional programming construct"**	

10.	**"Means responsive" terms** "**Means responsive to** [said first command/a single one of said second commands/the detection of two consecutive ones of said second commands/a first one of said control commands/a second one of said control command/two consecutive ones of said second control commands]	This term is governed by 35 U.S.C. § 112(6). **In re 'Skip'** The structure corresponding to the claimed function is the following structures and equivalents thereof: A player client programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 21 to 25 and column 34, line 28 to column 35, line 48. A player client programmed to perform the following steps: 1. scanning forward in the sequencing file to locate the	This term is governed by 35 U.S.C. § 112(6). Function "in response to a ['Skip'/single 'Back'/two consecutive 'Back'/'Back'] command[s], discontinuing the [reproduction/translation] of the currently playing program segment and instead continuing the [reproduction/translation] at the beginning of [a program segment which follows said currently playing program in said sequence/said currently playing program/a program segment which precedes the currently playing program segment/the next program segment in said sequence]." Structure **Skip:** A general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and

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	for discontinuing the [reproduction/translation] **of the currently playing program segment and instead continuing the** [reproduction/translation] **at the beginning of** [a program segment which follows said currently playing program in said sequence/said currently playing program/a program segment which precedes the currently playing program segment/the next program segment in said sequence] ('076 patent claims 1, 2, 3, 14, 15)	next Selection_Record; 2. resetting the CurrentPlay variable to the record number of that Selection_Record; and 3. fetching and playing the program segment identified by the ProgramID contained in the new Selection_Record. **In re 'Back'** The structure corresponding to the claimed function is the following structures and equivalents thereof: A player client programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 49 to 59. Specifically, this algorithm includes the following steps: 1. if the currently playing program segment has played for a predetermined amount of time, resetting the playback position to the beginning of the program segment; and 2. playing the program segment from its beginning. **In re 'Two Back'** The structure corresponding to the claimed function is the following structures and equivalents thereof: A player client programmed to perform the algorithm that is	more fully described at column 15, lines 21 to 25 and column 34, line 28 to column 35, line 48. Specifically, this algorithm includes the following steps: (1) scanning forward in the received sequencing file to locate the next Selection_Record of the appropriate LocType; (2) resetting the CurrentPlay variable to the record number of that Selection_Record; and (3) fetching and playing the program segment identified by the ProgramID contained in the new Selection_Record. **Single Back:** A general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 49 to 59. Specifically, this algorithm includes the following steps: (1) if the currently playing program segment has played for a predetermined amount of time, resetting the playback position to the beginning of the program segment; and (2) playing the program segment from its beginning. **Two Back:** A general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269, 235, 261, 262, and 278 and more fully described at column 15, lines 49 to 59 and column 34, line 28 to column 35, line 53. Specifically, this algorithm includes the following steps: (1) in response to a first "Back" command, if the currently playing program segment has played for a predetermined amount of time, resetting the playback position to the beginning of the program segment, and playing the program segment from its beginning; (2) in response to a second "Back" command, if the currently playing program segment is near its beginning, scanning backward in the

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support
		illustrated in the flow chart of Figure 3 at items 269, 235, 261, 262, and 278 and more fully described at column 15, lines 49 to 59 and column 34, line 28 to column 35, line 53. Specifically, this algorithm includes the following steps: 1. in response to a first 'Back' command, if the currently playing program segment has played for a predetermined amount of time, resetting the playback position to the beginning of the program segment and playing the program segment from its beginning; 2. in response to a second 'Back' command, if the currently playing program segment has not yet played for said predetermined amount of time, scanning backward in the sequencing file to locate the previous Selection_Record; 3. resetting the CurrentPlay variable to the record number of that Selection_Record; and 4. fetching and playing the program segment identified by the ProgramID contained in the new Selection_Record. Supporting Evidence: '076 patent, 1:6-9; 1:64-2:3; 2:44-3:27; 4:33-5:5; 5:47-59; 6:62-8:44; 8:62-9:6; 9:51-10:6; 10:44-54; 11:39-13:21; 15:21-16:6; 16:54-60; 17:5-14; 18:60-19:15; 31:63-33:40 34:19-35:53; Figs. 1, 2, 3 and 5; claims 1, 2, 3, 9, 10, 11, 12,	received sequencing file to locate the previous Selection_Record of the appropriate LocType; (3) resetting the CurrentPlay variable to the record number of that Selection_Record; and (4) fetching and playing the program segment identified by the ProgramID contained in the new Selection_Record. Supporting Evidence: • *See* supporting evidence for "file of data establishing a sequence." • '076 patent, Figs. 3 and 5; 4:33-46; 15:21-42; 34:24-35:53. • '178 Patent Reexamination (Control No. 95/001,295): Patent Owner's April 22, 2011 Response, at 19. **Defendants' change to the Apple construction:** • **Adding the word "received" before "sequencing file."**

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support

		14, 15 and 16.
		
		'178 patent, 4:43-55; 15:47-63; Figs. 3 & 5;
		
		• *Personal Audio, LLC v. Apple*
		   o Joint Claim Construction and Prehearing Statement, Dkt. No. 142
		   o Amended Joint Construction and Prehearing Statement, Dkt. No. 159
		   o Order Denying Motion for Summary Judgment, Dkt. No. 292
		   o Court's Reconsideration Claim Construction Order, Dkt. No. 358
		   o Court's Order re Apple's Motions for JMOL (August 19, 2011) (and evidence cited therein)
		
		Plaintiff's changes to the Apple construction:
		• **removing the reference to "LocType"**
		• **replacing the "general purpose computer" with "player client"**	

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support
11.	"**a processor for continuously delivering a succession of said audio program files in said collection to said audio output unit in said ordered sequence specified by said sequencing file in the absence of a program selection command from said listener**" ('178 patent claim 1)	This term is governed by 35 U.S.C. § 112(6). The structure corresponding to the claimed function is the following structures and equivalents thereof: A sound card and a player client to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 233, 235, 237, 239, and 261 and more fully described at column 12, line 22 to column 13, line 16 and column 34, line 19 to column 35, line 32. Specifically, this algorithm includes the following steps: 1. beginning playback with the audio program file identified by the ProgramID contained in the Selection_Record specified by the CurrentPlay variable; 2. when the currently playing audio program file concludes, incrementing the CurrentPlay variable by one and fetching and playing the audio program file identified by the ProgramID contained in the next Selection_Record in the sequencing file; 3. repeating step (2) until the last Selection_Record in the sequencing file is reached, which resets the CurrentPlay variable to "1" to begin the playing sequence again with the first Selection_Record in the sequencing file.	This term is governed by 35 U.S.C. § 112(6). <u>Function</u> "continuously delivering a succession of said audio program files in said collection to said audio output unit in said ordered sequence specified by said sequencing file in the absence of a program selection command from said listener" <u>Structure</u> A sound card that includes a digital to analog converter and a general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 233, 235, 237, 239, and 261 and more fully described at column 12, line 22 to column 13, line 16 and column 34, line 19 to column 35, line 32. Specifically, this algorithm includes the following steps: (1) beginning playback with the audio program file identified by the ProgramID contained in the Selection_Record specified by the CurrentPlay variable; (2) when the currently playing audio program file concludes, (a) if the concluded segment is a topic or subject announcement, incrementing the CurrentPlay variable by one and fetching and playing the audio program file identified by the ProgramID contained in the next Selection_Record in the received sequencing file, and (b) if the concluded segment is a program segment, (i) scanning forward in the received sequencing file to locate the next Selection_Record containing the appropriate LocType; (ii) resetting the CurrentPlay variable to the record number of that Selection_Record; and (iii) fetching and playing the program segment identified by the

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support

		Supporting Evidence:
		
		'076 patent, 1:6-9; 1:64-2:3; 2:44-3:27; 5:47-59; 6:62-8:44; 9:51-10:6; 10:44-54; 17:5-14; 18:60-19:15; Fig. 1; Fig. 2
		
		'178 patent, 4:43–5:5; 9:3-6; 11:45–13:21; 14:25-65; 16:54-60; 34:19–35:32; Figs. 1 and 3, Claim 1, 14;
		
		• *Personal Audio, LLC v. Apple*
		    o Joint Claim Construction and Prehearing Statement, Dkt. No. 142
		    o Amended Joint Construction and Prehearing Statement, Dkt. No. 159
		    o Order Denying Motion for Summary Judgment, Dkt. No. 292
		    o Court's Reconsideration Claim Construction Order, Dkt. No. 358
		
		Plaintiff's changes to the Apple construction:
		• **removing the reference to "LocType"**
		• **replacing the "general purpose computer" with "player client"**
		• <u>**removing reference to "digital to analog converter"**</u>
			ProgramID contained in the new Selection_Record;
			
			(3) repeating step (2) until a rewind Selection_Record (LocType: R) in the received sequencing file is reached, which resets the CurrentPlay variable to the location value contained in the rewind Selection_Record which is set to "1" to begin the playing sequence again with the first Selection_Record in the received sequencing file.
			
			Supporting Evidence:
			• '178 patent, Figs. 3, 5; 29:55-65; 30:56-67; 31:56-32:43; 34:15-26; 34:35-39; 34:55-64; 35:29-34; 35:43-53.
			
			Defendants' changes to the Apple construction:
			• **Changing steps 2 and 3**
			• **Adding the word "received" before "sequencing file"**

12.	**"a processor . . . for discontinuing the reproduction of the currently playing audio program file and instead**	This term is governed by 35 U.S.C. § 112(6). The structure corresponding to the claimed function can be the following structures and equivalents thereof:	This term is governed by 35 U.S.C. § 112(6). <u>Function</u> "in response to a 'Go' command, discontinuing the reproduction of the currently playing audio program file and instead continuing the

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support

	continuing the reproduction at the beginning of a listener-selected one of said audio program files in said collection in response to a program selection command from said listener" ('178 patent claim 1)	A player client programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 14, lines 25 to 26; column 14, lines 35 to 39; and column 34, line 19 to column 35, line 52. Specifically, this algorithm includes the following steps:
		
		1. resetting the CurrentPlay variable to the record number of the listener-selected Selection_Record; and
		
		2. fetching and playing the audio program file identified by the ProgramID contained in the new Selection_Record.
		
		Supporting Evidence:
		
		'076 patent 1:6-9; 1:64-2:3; 2:44-3:27; 5:47-59; 6:62-8:44; 9:51-10:6; 10:44-54; 17:5-14; 18:60-19:15; Fig. 1; Fig. 2
		
		'178 patent, 4:43–5:5; 9:3-6; 11:45–13:21; 14:25-65; 16:54-60; 34:19–35:52; Figs. 1 and 3, Claim 1, 14;
		
		- *Personal Audio, LLC v. Apple*
		  - Joint Claim Construction and Prehearing Statement, Dkt. No. 142
		  - Amended Joint Construction and Prehearing Statement, Dkt. No. 159
		  - Order Denying Motion for Summary Judgment, Dkt. No. 292
		  - Court's Reconsideration Claim Construction Order, Dkt. No. 358
			reproduction at the beginning of a listener-selected one of said audio program files in said collection"
			
			<u>Structure</u>
			A general purpose computer programmed to perform the algorithm in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 14, lines 25 to 26; column 14, lines 35 to 39; column 33, line 11 to line 16; column 34, line 19 to column 35, line 52; and column 35, line 54 to column 36, line 9. Specifically, the algorithm includes the following steps:
			
			(1) identifying the listener-selected Selection_Record identified by the offset within the "L" Selection_Record of the hyperlink passage in the received sequencing file;
			
			(2) resetting the CurrentPlay variable to the record number of the listener-selected Selection_Record; and
			
			(3) fetching and playing the audio program file identified by the ProgramID contained in the new Selection_Record.
			
			Supporting Evidence:
			- '178 patent, Figs. 3, 5; 2:3-8; 3:29-43; 14:25-57; 33:3-8; 34:14-54; 35:43-36:47.
			
			Defendants' changes to the Apple construction:
			- **Adding step 1**
			- **Adding the word "received" before "sequencing file"**

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support
		Plaintiff's changes to the Apple construction: • **replacing the "general purpose computer" with "player client"**	
13.	"**wherein said processor responds to a skip** [forward/backward] **program selection command accepted from said listener** [at a time when said currently playing audio program file has played for at least a predetermined amount of time/at a time when said currently playing audio program file has not yet played for said predetermined amount of time] **by discontinuing the reproduction of said currently playing audio program file and instead continuing the reproduction at the beginning of** [that audio program file which follows said currently audio program file in said ordered sequence specified by said sequencing	This term is governed by 35 U.S.C. § 112(6). **In re 'Skip'** The structure corresponding to the claimed function is the following structures and equivalents thereof: A player client programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 25 to 29 and column 34, line 19 to column 35, line 35. Specifically, this algorithm includes the following steps: 1. scanning forward in the sequencing file to locate the next Selection_Record; 2. resetting the CurrentPlay variable to the record number of that Selection_Record; and 3. fetching and playing the audio program file identified by the ProgramID contained in the new Selection_Record. **In re 'Back' 1** The structure corresponding to the claimed function is the following structures and equivalents thereof:	This term is governed by 35 U.S.C. § 112(6). Function "in response to a ['Skip' command/ "Back" command accepted at a time when said currently playing audio program file has played for at least a predetermined amount of time/ "Back" command accepted at a time when said currently playing audio program file has yet played for at least a predetermined amount of time], discontinuing the reproduction of the currently playing audio program file and instead continuing the reproduction at the beginning of [that audio program file which follows said currently playing program in said sequence /said currently playing program/ said currently playing audio program file/a program segment which precedes the currently playing program segment in said ordered sequence specified by said sequencing file.]." Structure **Skip forward:** A general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 21 to 25 and column 34, line 28 to column 35, line 48. Specifically, this algorithm includes the following steps: (1) scanning forward in the received sequencing file to locate the next Selection_Record of the appropriate LocType; (2) resetting the CurrentPlay variable to the record number of that Selection_Record; and

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	file/said currently playing audio program file/ program segment which precedes the currently playing program segment in said ordered sequence specified by said sequencing file]." ('178 patent claims 4, 5, 6)	A player client programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 53 to 63.
		
		Specifically, this algorithm includes the following steps:
		
		  1. if the currently playing audio program file has played for a predetermined amount of time, resetting the playback position to the beginning of the audio program file; and
		
		  2. playing the audio program file from its beginning.
		
		In re 'Back' 2
		The structure corresponding to the claimed function is the following structures and equivalents thereof:
		
		A player client programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 53 to 63 and column 34, line 19 to column 35, line 40.
		
		Specifically, this algorithm includes the following steps:
		
		  1. if the currently playing audio program file has not yet played for said predetermined amount of time, scanning backward in the sequencing file to locate the previous Selection_Record;
		
		  2. resetting the CurrentPlay variable to the record number of that Selection_Record; and
			(3) fetching and playing the program segment identified by the ProgramID contained in the new Selection_Record.
			
			Back when said currently playing audio program file has played for at least a predetermined amount of time: A general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 49 to 59. Specifically, this algorithm includes the following steps:
			
			(1) if the currently playing program segment has played for a predetermined amount of time, resetting the playback position to the beginning of the program segment; and
			
			(2) playing the program segment from its beginning.
			
			Back when said currently playing audio program file has yet played for at least a predetermined amount of time: A general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 53 to 63 and column 34, line 19 to column 35, line 40. Specifically, this algorithm includes the following steps:
			
			1) if the currently playing program segment has not yet played for said predetermined amount of time, scanning backward in the received sequencing file to locate the previous Selection_Record of the appropriate LocType;
			
			2) resetting the CurrentPlay variable to the record number of that Selection_Record; and
			
			3) fetching and playing the program segment identified by the ProgramID contained in the new Selection_Record.
			
			Supporting Evidence:
			  • *See* supporting evidence for "file of data establishing a

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support
		3. fetching and playing the program segment identified by the ProgramID contained in the new Selection_Record. Supporting Evidence: '076 patent, 1:6-9; 1:64-2:3; 2:44-3:27; 4:33-5:5; 5:47-59; 6:62-8:44; 8:62-9:6; 9:51-10:6; 10:44-54; 11:39-13:21; 15:21-16:6; 16:54-60; 17:5-14; 18:60-19:15; 31:63-33:40 34:19-35:53; Figs. 1, 2, 3 and 5; claims 9, 10, 11, 12 and 16. '178 patent, 4:43–5:5; 15:25-46; 34:15-35:35; Figs. 1 and 3, Claim 4, 5, 6, 7; • *Personal Audio, LLC v. Apple* o Joint Claim Construction and Prehearing Statement, Dkt. No. 142 o Amended Joint Construction and Prehearing Statement, Dkt. No. 159 o Order Denying Motion for Summary Judgment, Dkt. No. 292 Court's Reconsideration Claim Construction Order, Dkt. No. 358 **Plaintiff's changes to the Apple construction:** • **removing the reference to "LocType"** • **replacing the "general purpose computer" with "player client"**	sequence." **Defendants' change to the Apple construction:** • **Adding the word "received" before "sequencing file."**

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support
14.	"**editing means for modifying said data establishing said sequence**" ('076 patent claim 5)	The structure corresponding to the claimed function is the following structures and equivalents thereof: A player client programmed to: 1. Add a program segment; and/or 2. Delete a program segment; and/or 3. Assign a new or different order to a given program segment; and Update the order for the program segments in the serialized sequence. Supporting Evidence: • '076 patent, 1:6-9; 1:64-2:3; 2:44-3:27; 5:47-59; 6:62--9:38; 9:51-10:6; 10:44-54; 12:21-40; 17:5-14; 18:60-19:15; 30:39-54; Figs. 1 and 2, Claim 5, 6. • Expert Declaration	This term is governed by 35 U.S.C. § 112(6). Indefinite <u>Function</u> "modifying said data establishing said sequence" <u>Structure</u> No disclosure of corresponding structure in the patent specification. Supporting Evidence: • Expert Declaration
15.	"**wherein said editing means includes means for reordering the sequence established by said data**" ('076 patent claim 6)	The structure corresponding to the claimed function can be the following structures and equivalents thereof: A player client programmed to: 1. Assign a new or different order to a given program segment; and 2. Update the order for the program segments in the serialized sequence.	This term is governed by 35 U.S.C. § 112(6). Indefinite <u>Function</u> "reordering the sequence established by said data" <u>Structure</u> No disclosure of corresponding structure in the patent specification.

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		Supporting Evidence: • '076 patent, 1:6-9; 1:64-2:3; 2:44-3:27; 5:47-59; 6:62--9:38; 9:51-10:6; 10:44-54; 12:21-40; 17:5-14; 18:60-19:15; 30:39-54; Figs. 1 and 2, Claim 5, 6. • Expert Declaration	Supporting Evidence: • Expert Declaration
16.	"**audio playback unit for automatically and continuously reproducing said audio program files in said collection in the ordered sequence specified by said playback session sequencing file in the absence of a control command from said listener**" ('178 patent claim 14)	This term is governed by 35 U.S.C. § 112(6). The structure corresponding to the claimed function is the following structures and equivalents thereof: A sound card that includes a digital to analog converter; headphones or one or more speakers; and a player client programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 233, 235, 237, 239, and 261 and more fully described at column 12, line 16 to column 13, line 11 and column 34, line 28 to column 35, line 44. Specifically, this algorithm includes the following steps: 1. beginning playback with the program segment identified by the ProgramID contained in the Selection_Record specified by the CurrentPlay variable; 2. when the currently playing program segment concludes, incrementing the CurrentPlay variable by one and fetching and playing the program segment	This term is governed by 35 U.S.C. § 112(6). <u>Function</u> "continuously reproducing said program segments in the order established by said sequence in the absence of a control command" <u>Structure</u> A sound card that includes a digital to analog converter; headphones or one or more speakers; and a general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 233, 235, 237, 239, and 261 and more fully described at column 12, line 16 to column 13, line 11 and column 34, line 28 to column 35, line 44. Specifically, this algorithm includes the following steps: (1) beginning playback with the program segment identified by the ProgramID contained in the Selection_Record specified by the CurrentPlay variable; (2) when the currently playing program segment concludes, (a) if the concluded segment is a topic or subject announcement, incrementing the CurrentPlay variable by one and fetching and playing the program segment identified by the ProgramID contained

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		identified by the ProgramID contained in the next Selection_Record in the sequencing file;
		
		3. repeating step (2) until the last Selection_Record in the sequencing file is reached, which resets the CurrentPlay variable to "1" to begin the playing sequence again with the first Selection_Record in the sequencing file.
		
		Supporting Evidence:
		
		'076 patent, 1:6-9; 1:64-2:3; 2:44-3:27; 4:33-5:5; 5:47-59; 6:62-8:44; 8:62-9:6; 9:51-10:6; 10:44-54; 11:39-13:21; 15:21-16:6; 16:54-60; 17:5-14; 18:60-19:15; 31:63-33:40, 34:19-35:53; Figs. 1, 2, 3 and 5; claims 9, 10, 11, 12 and 16.
		
		'178 patent, 4:43–5:5; 9:3-6; 11:45–13:21; 14:25-65; 16:54-60; 34:19–35:52; Figs. 1 and 3, Claim 1, 14
		    Personal Audio, LLC v. Apple ○ Joint Claim Construction and Prehearing Statement, Dkt. No. 142 ○ Order Denying Motion for Summary Judgment, Dkt. No. 292 ○ Court's Reconsideration Claim Construction Order, Dkt. No. 358 ○ Court's Order re Apple's Motions for JMOL (August 19, 2011) (and evidence cited therein) *Personal Audio, LLC v. HTC* ○ Personal Audio's Responsive Claim Construction Brief, Dkt. No. 127, p.11-18 ○ Personal Audio's Sur-Reply Claim Construction Brief, Dkt. No. 130, p. 3-4
			in the next Selection_Record in the received sequencing file, and
			
			(b) if the concluded segment is a program segment,
			
			    (i) scanning forward in the received sequencing file to locate the next Selection_Record containing the appropriate LocType;
			
			    (ii) resetting the CurrentPlay variable to the record number of that Selection_Record; and
			
			    (iii) fetching and playing the program segment identified by the ProgramID contained in the new Selection_Record;
			
			(3) repeating step (2) until a rewind Selection_Record (LocType: R) in the received sequencing file is reached, which resets the CurrentPlay variable to the location value contained in the rewind Selection_Record which is set to "1" to begin the playing sequence again with the first Selection_Record in the received sequencing file.
			
			Supporting Evidence:
			    '076 patent at 29:57-30:9; 30:59-31:3; 31:63–32:50; 34:24-36; 34:45-49; 34:65-35:1; 35:38-44; 35:54-64; Figs. 3, 5.

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support

17.	"**a processor for executing one or more utility programs to perform control functions in response to said input commands from a user, said functions including: (a) in response to a first one of said input commands designating a selected audio program file described on said visual menu listing for causing said audio playback unit to discontinue the reproduction of the currently playing audio program file in said ordered sequence and to instead continue the reproduction at the beginning of said selected audio program file**" ('178 patent claim 14)	This term is governed by 35 U.S.C. § 112(6).
		
		 The structure corresponding to the claimed function is the following structures and equivalents thereof:
		
		 A player client programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 14, lines 25 to 26; column 14, lines 35 to 39; and column 34, line 19 to column 35, line 52.
		
		 Specifically, this algorithm includes the following steps:
		
		 1. resetting the CurrentPlay variable to the record number of the user-selected Selection_Record; and
		
		 2. fetching and playing the audio program file identified by the ProgramID contained in the new Selection_Record.
		
		 Supporting Evidence:
		
		 '076 patent, 1:6-9; 1:64-2:3; 2:44-3:27; 5:47-59; 6:62-8:44; 9:51-10:6; 10:44-54; 17:5-14; 18:60-19:15; Fig. 1; Fig. 2
		
		 '178 patent, 4:43–55; 14:25-39; 15:25-29; 15:47-63; 34:19–35:52; Figs. 3 and 5, Claim 14;
		
		 • *Personal Audio, LLC v. Apple*
		      o Joint Claim Construction and Prehearing Statement, Dkt. No. 142
		      o Amended Joint Construction and Prehearing
			This term is governed by 35 U.S.C. § 112(6).
			
			 Function
			 "(a) in response to a 'Go' command designating a selected audio program file described on said visual menu listing, causing said audio playback unit to discontinue the reproduction of the currently playing audio program file in said ordered sequence and to instead continue the reproduction at the beginning of said selected audio program file"
			
			 Structure
			 A general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 14, lines 25 to 26; column 14, lines 35 to 39; and column 34, line 19 to column 35, line 52. Specifically, this algorithm includes the following steps:
			
			 (1) identifying the listener-selected Selection_Record identified by the offset within the "L" Selection_Record of the hyperlink passage in the received sequencing file;
			
			 (2) resetting the CurrentPlay variable to the record number of the user-selected Selection_Record; and
			
			 (3) fetching and playing the audio program file identified by the ProgramID contained in the new Selection_Record.
			
			 Supporting evidence
			 • '178 patent, Figs. 3, 5; 2:3-8; 3:29-43; 14:25-57; 33:3-8; 34:14-54; 35:43-36:47.
			
			 Defendants' changes to the Apple construction:
			 • **Adding step 1 in the structure algorithm**

Ref.	Term To Be Construed	Plaintiff's Proposed Constructions and Support	Defendants' Proposed Constructions and Support
		Statement, Dkt. No. 159 o Order Denying Motion for Summary Judgment, Dkt. No. 292 o Court's Reconsideration Claim Construction Order, Dkt. No. 358 **Plaintiff's change to the Apple construction:** • **replacing "general purpose computer" with "player client."**	• **Adding the word "received" before "sequencing file"**
18.	"**a processor for executing one or more utility programs to perform control functions in response to said input commands from a user, said functions including… (b) in response to a second one of said control commands for discontinuing the reproduction of said currently playing audio program file and instead continuing the reproduction at the beginning of that audio program file which follows said currently playing audio program file in said ordered sequence specified by**	This term is governed by 35 U.S.C. § 112(6). The structure corresponding to the claimed function is the following structures and equivalents thereof: A player client programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 25 to 29 and column 34, line 19 to column 35, line 35. Specifically, this algorithm includes the following steps: 1. scanning forward in the sequencing file to locate the next Selection_Record; 2. resetting the CurrentPlay variable to the record number of that Selection_Record; and 3. fetching and playing the audio program file identified by the ProgramID contained in the new Selection_Record.	This term is governed by 35 U.S.C. § 112(6). Function "(b) In response to a "Skip" command, discontinuing the reproduction of said currently playing audio program file and instead continuing the reproduction at the beginning of that audio program file which follows said currently playing said currently audio program file in said ordered sequence" Structure A general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 21 to 25 and column 34, line 28 to column 35, line 48. Specifically, this algorithm includes the following steps: (1) scanning forward in the received sequencing file to locate the next Selection_Record of the appropriate LocType; (2) resetting the CurrentPlay variable to the record number of that Selection_Record; and (3) fetching and playing the program segment identified by the

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	said playback session sequencing file" ('178 patent claim 14)	Supporting Evidence:
		
		'076 patent, 1:6-9; 1:64-2:3; 2:44-3:27; 4:33-5:5; 5:47-59; 6:62-8:44; 8:62-9:6; 9:51-10:6; 10:44-54; 11:39-13:21; 15:21-16:6; 16:54-60; 17:5-14; 18:60-19:15; 31:63-33:40, 34:19-35:53; Figs. 1, 2, 3 and 5; claims 9, 10, 11, 12 and 16.
		
		'178 patent, 4:43–55; 14:25-39; 15:25-29; 15:47-63; 34:19–35:52; Figs. 3 and 5, Claim 14;
		
		• *Personal Audio, LLC v. Apple*
		    o Joint Claim Construction and Prehearing Statement, Dkt. No. 142
		    o Amended Joint Construction and Prehearing Statement, Dkt. No. 159
		    o Order Denying Motion for Summary Judgment, Dkt. No. 292
		    o Court's Reconsideration Claim Construction Order, Dkt. No. 358
		
		Plaintiff's changes to the Apple construction:
		• **replacing "general purpose computer" with "player client."**
		• **Removing the reference to "LocType"**
			ProgramID contained in the new Selection_Record.
			
			Supporting Evidence:
			• *See* supporting evidence for "sequence file terms."
			
			Defendants' change to the Apple construction:
			• **Adding the word "received" before "sequencing file"**

19.	"**a processor for executing one or more utility programs to perform control functions in response to said input commands from a user, said functions including … (d)**	This term is governed by 35 U.S.C. § 112(6). The structure corresponding to the claimed function is the following structures and equivalents thereof: A player client programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 53 to 63 and	This term is governed by 35 U.S.C. § 112(6). Function "In response to a 'Back' command accepted at a time when said currently playing audio program file has not yet played for said predetermined amount of time discontinuing the reproduction of the currently playing audio program file and instead continuing the reproduction at the beginning of that audio program file which precedes

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	in response to said third one of said control commands accepted from said listener at a time when said currently playing audio program file has not yet played for said predetermined amount of time for discontinuing the reproduction of the currently playing program file and instead continuing the reproduction at the beginning of that audio program file which precedes the currently playing program segment in said ordered sequence specified by said playback session sequencing file" ('178 patent claim 14)	column 34, line 19 to column 35, line 40.

Specifically, this algorithm includes the following steps:

1. if the currently playing audio program file has not yet played for said predetermined amount of time, scanning backward in the sequencing file to locate the previous Selection_Record;

2. resetting the CurrentPlay variable to the record number of that Selection_Record; and

3. fetching and playing the audio program file identified by the ProgramID contained in the new Selection_Record.

Supporting Evidence:

'076 patent, 1:6-9; 1:64-2:3; 2:44-3:27; 5:47-59; 6:62-8:44; 9:51-10:6; 10:44-54; 17:5-14; 18:60-19:15; Fig. 1; Fig. 2

'178 patent, 4:43–55; 14:25-39; 15:25-29; 15:47-63; 34:19–35:52; Figs. 3 and 5, Claim 14;

- *Personal Audio, LLC v. Apple*
  - Joint Claim Construction and Prehearing Statement, Dkt. No. 142
  - Amended Joint Construction and Prehearing Statement, Dkt. No. 159
  - Order Denying Motion for Summary Judgment, Dkt. No. 292
  - Court's Reconsideration Claim Construction Order, Dkt. No. 358 | the currently playing program segment in said ordered sequence"

Structure
A general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 53 to 63 and column 34, line 19 to column 35, line 40. Specifically, this algorithm includes the following steps:

1) if the currently playing program segment has not yet played for said predetermined amount of time, scanning backward in the received sequencing file to locate the previous Selection_Record of the appropriate LocType;

2) resetting the CurrentPlay variable to the record number of that Selection_Record; and

3) fetching and playing the program segment identified by the ProgramID contained in the new Selection_Record.

Supporting Evidence:
- *See* supporting evidence for "sequence file terms."

Defendants' change to the Apple construction:
- **Adding the word "received" before "sequencing file"** |

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		Plaintiff's changes to the Apple construction: • **replacing "general purpose computer" with "player client."** • **Removing the reference to "LocType"**	
20.	"**wherein said processor responds to a skip forward program selection command when playing the last audio program file in said ordered sequence** specified by said sequencing file **by continuing reproduction at the beginning of the first audio program file in said sequence**, and **responds to a skip backward program selection command accepted at a time when said first audio program file is playing** but said first audio program file has not yet played for said predetermined amount of time **by continuing reproduction at the beginning of the last**	This term is governed by 35 U.S.C. § 112(6). __In re 'Skip'__ The structure corresponding to the claimed function is the following structures and equivalents thereof: A player client programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 25 to 29 and column 34, line 19 to column 35, line 42. Specifically, this algorithm includes the following steps: 1. scanning forward in the sequencing file to locate the next Selection_Record; 2. if at the last Selection_Record of the sequencing file, then reset the CurrentPlay variable to the record number of the first Selection_Record in the sequence; and 3. fetching and playing the audio program file identified by the ProgramID contained in the new Selection_Record.	This term is governed by 35 U.S.C. § 112(6). Function "(a) in response to a 'Skip' command accepted when playing the last audio program file in said ordered sequence, continuing reproduction at the beginning of the first audio program file in said sequence; and (b) in response to a 'Back' command accepted at a time when said first audio program file is playing but has not yet played for said predetermined amount of time, continuing reproduction at the beginning of the last audio program in said sequence." Structure **Skip (a):** A general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 21 to 25 and column 34, line 28 to column 35, line 48. Specifically, this algorithm includes the following steps: (1) scanning forward in the received sequencing file and when the "R" Selection_Record marking the end of the sequencing file is encountered, (2) resetting the CurrentPlay variable to the record number contained in the "R" Selection_Record which is set to "1" and is the record number of the Selection_Record containing the ProgramID of the first audio program file in the ordered sequence; and (3) fetching and playing the audio program file identified by the

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	audio program in said sequence whereby the reproduction of the audio program files specified by said sequencing file can be skipped from beginning to beginning in both the forward or backward direction in a bidirectional endless loop." ('178 patent claim 7)	**In re 'Back'** The structure corresponding to the claimed function can be the following structures and equivalents thereof: A player client programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 53 to 63 and column 34, line 19 to column 35, line 42. Specifically, this algorithm includes the following steps: 1. if the currently playing audio program file has not yet played for said predetermined amount of time, scanning backward in the sequencing file to locate the previous Selection_Record; 2. if at the first Selection_Record of the sequencing file, the resetting the CurrentPlay variable to the record number of last Selection_Record in the sequence; and 3. fetching and playing the program segment identified by the ProgramID contained in the new Selection_Record. Supporting Evidence: '076 patent, 1:6-9; 1:64-2:3; 2:44-3:27; 5:47-59; 6:62-8:44; 9:51-10:6; 10:44-54; 17:5-14; 18:60-19:15; Fig. 1; Fig. 2 '178 patent, 15:53-63; 15:25-29; 34:19–35:52; Figs. 3 and 5, Claim 7;	ProgramID contained in the new Selection_Record. **Back (b):** A general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 53 to 63 and column 34, line 19 to column 35, line 40. Specifically, this algorithm includes the following steps: (1) if the currently playing audio program file has not yet played for said predetermined amount of time, scanning backward in the received sequencing file, and when the "R" Selection_Record marking the beginning of the sequencing file is encountered, (2) resetting the CurrentPlay variable to the record number contained in the "R" Selection_Record, which is the record number of the last "S" subject Selection_Record in the ordered sequence; and (3) fetching and playing the program segment identified by the ProgramID contained in the new Selection_Record. Supporting Evidence: • '076 patent at 29:57-30:9; 30:59-31:3; 31:63–32:50; 34:24-36; 34:45-49; 34:65-35:1; 35:38-53; Figs. 3, 5. **Defendants' changes to the Apple construction** • **Adding the word "received" before "sequencing file"** • **Changing step (2) in Skip(a) structure.** • **Changing step (2) in Back(b) structure.**

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		• *Personal Audio, LLC v. Apple*
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		    o Order Denying Motion for Summary Judgment, Dkt. No. 292
		    o Court's Reconsideration Claim Construction Order, Dkt. No. 358
		
		Plaintiff's changes to the Apple construction
		 • **Replacing "general purpose computer" with "player client."**
		 • **Removing the reference to "R" Selection Record**	

21.	"**a processor for executing one or more utility programs to perform control functions in response to said input commands from a user, said functions including … (c) in response to a third one of said control commands accepted from said listener at a time when said currently playing audio program file has played for at least a predetermined amount of time by discontinuing**	This term is governed by 35 U.S.C. § 112(6). The structure corresponding to the claimed function is the following structures and equivalents thereof: A player client programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 53 to 63. Specifically, this algorithm includes the following steps: (1) if the currently playing audio program file has played for a predetermined amount of time, resetting the playback position to the beginning of the audio program file; and (2) playing the audio program file from its beginning. Supporting Evidence:	Construction from *Personal Audio LLC v. Apple, Inc. et al.*, Case No. 9:09-cv-00111-RC This term is governed by 35 U.S.C. § 112(6). Function "(c) in response to a 'Back' command accepted at a time when said currently playing audio program file has played for at least a predetermined amount of time, discontinuing the reproduction of said currently playing audio program file and instead continuing the reproduction at the beginning of said currently playing audio program file" Structure A general purpose computer programmed to perform the algorithm that is illustrated in the flow chart of Figure 3 at items 269 and 235 and more fully described at column 15, lines 53 to 63. Specifically, this algorithm

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	the reproduction of said currently playing audio program file and instead continuing the reproduction at the beginning of said currently playing audio program file" ('178 patent claim 14)	'076 patent, 1:6-9; 1:64-2:3; 2:44-3:27; 5:47-59; 6:62-8:44; 9:51-10:6; 10:44-54; 17:5-14; 18:60-19:15; Fig. 1; Fig. 2 '178 patent: Fig 3; Fig 5; 2:59-66; 8:65-9:3; 15:47-63; 34:61-35:7 **Plaintiff's changes to the Apple construction** • **Replacing "general purpose computer" with "player client."**	includes the following steps: (1) if the currently playing audio program file has played for a predetermined amount of time, resetting the playback position to the beginning of the audio program file; and (2) playing the audio program file from its beginning.
22.	"**wherein said processor displays selected ones of said image data files on said display screen concurrently with the reproduction of specified ones of said audio program files in the ordered sequence specified by said playback session sequencing file**" ('178 patent, claim 16)	This term is governed by 35 U.S.C. § 112(6). The structure corresponding to the claimed function is the following structures and equivalents thereof: A player client programmed to perform the algorithm described at column 32, line 55 to column 33, line 2. Specifically, this algorithm includes the following steps: (1) fetching the image file identified by the ImageID contained in an "I" Selection_Record; (2) beginning display of that image file at the position indicated by the immediately following "J" Selection_Record, which contains the offset location from the start of an audio program file; and (3) either (a) continuing the display of that image file until display of another image file begins at the position indicated by a subsequent pair of "I" and "J" Selection_Records, or (b) if a "K" Selection_Record follows the current pair of "I" and "J" Selection_Records, continuing the display of the current	Construction from *Personal Audio LLC v. Apple, Inc. et al.*, Case No. 9:09-cv-00111-RC This term is governed by 35 U.S.C. § 112(6). Function "displaying selected ones of said image data files on said display screen concurrently with the reproduction of specified ones of said audio program files in the ordered sequence specified by said playback session sequencing file" Structure A general purpose computer programmed to perform the algorithm described at column 32, line 55 to column 33, line 2. Specifically, this algorithm includes the following steps: (1) fetching the image file identified by the ImageID contained in an "I" Selection_Record; (2) beginning display of that image file at the position indicated by the immediately following "J" Selection_Record, which contains the offset

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		image file until the offset location contained in the "K" Selection_Record. Supporting Evidence: '076 patent, 1:6-9; 1:64-2:3; 2:44-3:27; 5:47-59; 6:62-8:44; 9:51-10:6; 10:44-54; 17:5-14; 18:60-19:15; Fig. 1; Fig. 2 '178 Patent, Col. 5:35-36, 6:11-31, 12:49-63, 32:55-33:2, Claim 16 • *Personal Audio LLC v. Apple, Inc. et al.*, Case No. 9:09-cv-00111-RC o Amended Joint Construction and Prehearing Statement, Dkt. No. 159 o Claim Construction Order, Dkt. No. 292 **Plaintiff's changes to the Apple construction:** • **Replacing "general purpose computer" with "player client."**	location from the start of an audio program file; and (3) either (a) continuing the display of that image file until display of another image file begins at the position indicated by a subsequent pair of "I" and "J" Selection_Records, or (b) if a "K" Selection_Record follows the current pair of "I" and "J" Selection_Records, continuing the display of the current image file until the offset location contained in the "K" Selection_Record.
23.	"**player**" ('076 patent claims 1-4) "**audio program player**" ('178 patent claims 1-10, 13-17, 28-29) "**programmed digital computer**" ('076 patent claims 14-15)	Plaintiff will supplement based on new position by Defendants.	Preamble is not limiting (plain and ordinary meaning). Defendants' position regarding these terms is not new as it was provided to Plaintiff on January 30, 2015 in accordance with the Court's Order, ECF No. 181.

	Term To Be Construed	Agreed Construction
24.	"**output means for producing audible sounds in response to analog audio signals**." ('076 patent claim 14)	Construction from *Personal Audio LLC v. Apple, Inc. et al.*, Case No. 9:09-cv-00111-RC This term is governed by 35 U.S.C. § 112(6). <u>Function</u> "producing audible sounds in response to analog audio signals." <u>Structure</u> 1. One or more speakers; or 2. Headphones.
25.	"**means for accepting control commands from a user of said player**" ('076 patent claims 1, 13) "**input means for accepting control commands from a user**." ('076 patent claim 14)	Construction from *Personal Audio LLC v. Apple, Inc. et al.*, Case No. 9:09-cv-00111-RC This term is governed by 35 U.S.C. § 112(6). <u>Function</u> "accepting control commands from a user" <u>Structure</u> 1. A microphone, sound card, and conventional speech recognition software; 2. A keyboard; 3. A pointing device such as a mouse, trackball, or touchpad; or 4. A hand controller connected by a infrared link to the player computer.
26.	"**processing means for translating said digitally recorded audio program segments into analog audio signals delivered to said output means for reproducing said recorded program**	Construction from *Personal Audio LLC v. Apple, Inc. et al.*, Case No. 9:09-cv-00111-RC This term is governed by 35 U.S.C. § 112(6). <u>Function</u> "translating said digitally recorded audio program segments into analog audio signals delivered to said output means for reproducing said recorded program segments in a form audible to said user."

Term To Be Construed	Agreed Construction
segments in a form audible to said user" ('076 patent claim 14)	<u>Structure</u> A sound card that includes a digital to analog converter and directs the converted analog audio signals to headphones or one or more speakers.